

Carmine Pindilli
41 Sunnywood Drive
Westfield NJ 07090
T: (908) 233-5198
PRO-SE DEFENDANT

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MALIBU MEDIA, LLC.

Plaintiff

v.

CARMINE PINDILLI
41 Sunnywood Drive
Westfield NJ,07090

Defendant.

United States District Court5
50 Walnut Street
Newark, NJ 07101

Case# 2:17-CV-12093-CCC-MF

Civil Action:

**ANSWER, AFFIRMATIVE
DEFENSES AND JURY DEMAND**

Defendant Carmine Pindilli ("Defendant"), hereby answers the Amended Complaint filed by Plaintiff MALIBU MEDIA, LLC ("Plaintiff"), and states as follows:

INTRODUCTION

1. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 1 of Plaintiff's Complaint and leaves Plaintiff to its proofs.
2. Defendant denies the allegations contained in Paragraph 2 of Plaintiff's Complaint. To the extent Paragraph 2 references a document, the document speaks for itself.

3. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 3 of Plaintiff's Complaint and leaves Plaintiff to its proofs. To the extent Paragraph 3 references a document, the document speaks for itself.

JURISDICTION & VENUE

4. Paragraph 4 of the Complaint contains conclusions of law to which no response is required.
5. Defendant denies the allegations contained in in Paragraph 5 of the Complaint. Even if the IP address in question was associated with the router or network located at Defendant's residence, those facts do not give rise to personal jurisdiction over Defendant. An IP address is not a person, rather it is merely a series of numbers associated to a device which can be accessed by multiple individuals over time. In addition, an IP address can be "hacked" or "spoofed" from a separate location by unscrupulous individuals. As a result, Plaintiff's software could inadvertently flag an innocent IP address if it is being spoofed by another.
6. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 6 of Plaintiff's Complaint and leaves Plaintiff to its proofs.
7. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 7 of Plaintiff's Complaint and leaves Plaintiff to its proofs.

PARTIES

8. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 8 of Plaintiff's Complaint and leaves Plaintiff to its proofs.
9. Defendant admits the allegation contained in Paragraph 9 of Plaintiff's Complaint

FACTUAL BACKGROUND

10. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 10 of Plaintiff's Complaint and leaves Plaintiff to its proofs.
11. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 11 of Plaintiff's Complaint and leaves Plaintiff to its proofs.
12. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 12 of Plaintiff's Complaint and leaves Plaintiff to its proofs.
13. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 13 of Plaintiff's Complaint and leaves Plaintiff to its proofs.
14. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 14 of Plaintiff's Complaint and leaves Plaintiff to its proofs.
15. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 15 of Plaintiff's Complaint and leaves Plaintiff to its proofs.
16. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 16 of Plaintiff's Complaint and leaves Plaintiff to its proofs.
17. Defendant denies the allegations contained in paragraph 17 of Plaintiff's Complaint.
18. Defendant denies the allegations contained in paragraph 18 of Plaintiff's Complaint.
19. Defendant admits that a copy of what purports to be a screen shot from the website www.copyright.gov of each of the 16 Registrations is attached to the Complaint as Exhibit B.
20. Defendant denies the allegations contained in paragraph 20 of Plaintiff's Complaint.
21. Defendant denies the allegations contained in paragraph 21 of Plaintiff's Complaint.

22. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 22 of Plaintiff's Complaint and leaves Plaintiff to its proofs
23. Defendant denies the allegations contained in paragraph 23 of Plaintiff's Complaint.
24. Defendant denies the allegations contained in paragraph 24 of Plaintiff's Complaint.
25. Defendant denies the allegations contained in paragraph 25 of Plaintiff's Complaint

MISCELLANEOUS

26. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 27 of Plaintiff's Complaint and leaves Plaintiff to its proofs.
27. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 27 of Plaintiff's Complaint and leaves Plaintiff to its proofs.

COUNT 1

DIRECT INFRINGEMENT

28. Defendant incorporates by reference each and every response to Paragraphs 1 through 27 above, as though set forth herein at length.
29. Defendant has insufficient knowledge to form a belief as to the allegation contained in Paragraph 29 of Plaintiff's Complaint and leaves Plaintiff to its proofs.
30. Defendant denies the allegations contained in Paragraph 30 of Plaintiff's Complaint.
31. Defendant denies the allegations contained in Paragraph 31 of Plaintiff's Complaint.
32. Defendant denies the allegations contained in Paragraph 32 of Plaintiff's Complaint.

PRAY FOR RELIEF

Defendant denies that Plaintiff is entitled to any of the relief requested in its request to the Court and denies the allegations contained therein

Defendant denies that Plaintiff is entitled to any of the relief requested in Paragraph A of the Complaint

Defendant denies that Plaintiff is entitled to the relief requested in Paragraph B of the Complaint

Defendant denies that Plaintiff is entitled to any of the relief requested in Paragraph C of the Complaint

Defendant denies that Plaintiff is entitled to any of the relief requested in Paragraph D of the Complaint

Defendant denies that Plaintiff is entitled to any of the relief requested in Paragraph E of the Complaint

Defendant denies that Plaintiff is entitled to any of the relief requested in Paragraph F of the Complaint

WHEREFORE, Defendant respectfully seeks an order and judgment as follows:

- a) dismissing Plaintiff's Complaint with prejudice;
- b) awarding Defendant costs and attorney's fees (if required) in defending this action; and
- c) such other and further relief as is just and equitable

AFFIRMATIVE DEFENSES

Without conceding that any of the following must be pleaded as an affirmative defense or that any of the following is not already in issue by virtue of the foregoing denials, or without prejudice to Defendant's right to plead additional defenses as discovery into the facts of the matter may warrant. Defendant hereby asserts the following defenses:

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

2. Plaintiff's Complaint is barred by the doctrine of de minimis non curate lex (the law cares not for trifles) or de minimis use.
3. Plaintiff's claims for relief are barred, in whole or in part, because it failed to mitigate its damages, if any.
4. Plaintiff's claims are barred, in whole or in part, because any infringement, if any was innocent.
5. Plaintiff's claims are barred because the statutory damages sought are unconstitutionally excessive and disproportionate to any actual damages that may have been sustained in violation of the Due Process Clause.
6. Plaintiff is not entitled to injunctive relief because any purported injury to Plaintiff is not immediate or irreparable and the Plaintiff has an adequate remedy at law.
7. Any acts on the part of Defendant were not the proximate cause of any damages that may have been sustained by Plaintiff and violated no duty to Plaintiff.
8. Defendant acted all times in good faith and without any fraud or malice.
9. Plaintiff's claims are barred by acts within its sole control and responsibility.
10. Relief sought by Plaintiff is barred due to lack of privity between Plaintiff and Defendant.
11. The relief sought by Plaintiff is barred by Plaintiff's own unclean hands.

Carmine Pindilli

41 Sunnywood Drive

Westfield NJ 07090

Pro- Se Defendant

By: 

RULE 4:5-1 CERTIFICATION

Defendant, hereby certifies that the matter in controversy is not subject to any other pending or contemplated judicial or arbitration proceeding. Defendant is not currently aware of any other party who should be joined in this action. Defendant is actively continuing its investigation into all relevant actions and activities and fully intends to prosecute all persons or entities associated with the above actions.

JURY DEMAND

Defendant hereby demands a dismissed charges or Trial by jury as to all issues contained therein.

CERTIFICATE OF SERVICE:

I certify that I have served a copy of the Defendant's Answer to the Plaintiff's Amended Complaint on June 5, 2018 by US Mail on the following:

Patrick J. Cerillo, Esq.
Patrick J. Cerillo, LLC.
4 Walter Foran Blvd. Suite 402
Flemington, NJ 0822

The original and two copies were hand delivered to the Clerk of the US District Court in Newark, NJ.


Your Signature

Carmine Pindilli
41 Sunnywood Drive

Westfield NJ 07090908-233-5198